In interpreting the effect of sub-section 12, it is necessary to consider the whole of section 144. As was said in *Warburton* v. *Loveland*[2]:

"No rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part".

I do not think that reading section 144(B) helps the respondent's argument. This section gives power to the Councillors to call upon the owner of the land to submit the plans and specifications required by section 144(1) when they have not been submitted by the person intending to erect the building. This is an additional power added in the interests of public health, but it does not take away the liability of the person erecting a building to submit plans and specifications in the first place.

The objection that this interpretation of section 144 would make two people liable at law for one offence is not in my opinion fatal. As I have said the object of regulating building operations is for the protection of the public. The owner of the land enjoys normally some benefit therefrom and there is no reason why he should not be also responsible for seeing to it that, when buildings are erected on his land, the provisions of section 144 are properly complied with. It is true that words used in sub-section 12 are "they shall be deemed to have been commenced ..... by the owner of the land". But as James L.J. said in *Ex parte Walton*,[3] "when a statute enacts that something shall be deemed to have been done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction should be resorted to". The intention of this statute is, as I have said, to protect the public health and in view of the wording of sub-sections 7 and 10 and the normal principles of criminal responsibility, sub-section 12 was added, in my opinion, as an additional weapon in the Municipal Authorities' armoury to aid them in their battle to protect the public health. It is not meant to exclude proceedings against the actual offender.

The Court of Appeal in *Hooi Chuk Kwong* v. *Lim Sow Choo (f)*[4] has cited with approval a dictum of Thomson J. (as he then was) in *Thong Peng Hong* v. *Public Prosecutor*[5]. In the latter case the learned Judge was dealing with words "shall, until the contrary is proved", "be deemed to have been in possession . . ." which are found in section 37(d) of the Dangerous Drugs Ordinance. In the course of his judgment the learned Judge said:—

"The object of such provisions is not to create new offences. Nor is it to lead to the conviction of innocent persons. It is to ensure that the Courts should draw from certain facts, once they are proved, the inferences that experience has shown a reasonable man would normally draw from such facts."

And he goes on to say:

"But I should emphasize the point that such provisions are in truth statutory directions as to the drawing of inferences. Inferences are matters of reason and it seems to me that if in any particular case such a statutory inference leads to a conclusion which is manifestly unreasonable then it must be held that such a result was not intended by the Legislature and, unless the words of the statute are crystal clear and compelling, any construction which leads to such result must be rejected".

It is true that the Court of Appeal was considering section 105(2) of the Town Boards Enactment and the words "until the contrary is proved" appear in that sub-section, which they do not in sub-section 12 of section 144 of the Ordinance. In the case of sub-section 12 the words are unequivocal. But though the wording is unequivocal, it does not mean that the owner of the land was necessarily in fact the person who commenced the building operations. It is as James L.J. has pointed out "a statutory fiction". The Legislature clearly means that the owner of the land should be made responsible where building operations have been commenced contrary to the provisions of section 144(7). But I do not think the Legislature meant by this to make him solely responsible and to prevent the action being taken against the actual offender when the proper authorities know who he is. I would say that to hold otherwise would be a "conclusion which is manifestly unreasonable", and therefore that the Legislature did not intend such a result. In view of the wording of sub-section 10, I think it is open, and indeed the duty of the prosecution, to proceed against the actual offender when he is known. To hold otherwise would impose an impossible burden upon the owner of the land who may have leased his land on a building lease reserving a peppercorn or nominal rent.

I therefore find myself with regret unable to follow the judgment in the *Lim Beng Teck*[1] case and allow the appeal.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.*; *Cheah Theam Swee & Co.*

SARASWATHY AMMAL & ANOR. v. CENTRAL BANK OF MALAYA LTD.

[A. C. J. (Ong J.) August 24, 1959]

[K. L. — Civil Appeal No. 10 of 1959]

Land laws — Chargor in possession — Property sold by chargee — Rights of chargor — Land Code (Cap.138), ss.138 and 152.

Landlord and Tenant — Tenants at sufferance — Notice to terminate tenancy — Rent free tenants — Claim to be tenants at will.

In this case the appellants are husband and wife, and the latter was since 1942 the registered proprietor of land on which house No. 95 Travers Road stands. In 1952 the property was charged to the respondent Bank, but the appellants remained in possession. As a result of proceedings under section 138 of the Land Code the property was sold at a public auction and it was knocked down to the Bank on February 18, 1956; but the bank was not registered as proprietor until May 22, 1956. On February 22, 1956 the Bank gave 7 days' notice to the appellants to quit and deliver up vacant possession of the premises, but, however, the notices were never served, and no further notices were given. On July 14, 1956 the Bank commenced action and obtained judgment *ex parte* on August 29, 1956. This judgment

was set aside on appeal and a rehearing was ordered. At the rehearing the Sessions Court gave judgment for the Bank.

On appeal the point: what are the rights of a chargor in possession whose property has been sold by the chargee in proceedings under section 138 of the Land Code and the chargee becomes the registered proprietor by purchase at the public auction, was raised by counsel for the appellant.

Held: section 152 of the Land Code in no way detracts from the fact that by the sale all the beneficial interest of the chargor in the property had passed to the Bank as purchaser. As between these parties the Bank was entitled to express an objection which effectively serves to negative their acquiescence to any tenancy at sufferance arising by implication of law.

No notice is required to terminate any tenancy at sufferance, and a landlord may enter at any time. A rent free tenant in England cannot claim the protection of the Acts, and the position is the same here under the Control of Rent Ordinance which makes it clear beyond peradventure that the Ordinance does not apply to tenants who pay no rent.

Cases referred to:—

(1) *Remon* v. *City of London Real Property Co.* [1921] 1 K.B. 49, 58.

(2) *Marcroft Wagons Ltd.* v. *Smith* [1951] 2 K.B. 496, 501.

(3) *Bracey* v. *Pales* [1927] 1 K.B. 818, 825.

(4) *Tool Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.* [1955] 2 All E.R. 657.

CIVIL APPEAL.

R. Ramani for the appellants.

S. D. K. Peddie for the respondents.

Cur. Adv. Vult.

Ong J.: This is an appeal against the decision of the Sessions Court, Kuala Lumpur, whereby the appellants were ordered to deliver up to the respondent Bank vacant possession of premises No. 95 Travers Road, Kuala Lumpur, and to pay mesne profits at the rate of $100 per month from the date of registration of the Bank as proprietor of the land until delivery of vacant possession.

The point raised by Mr. Ramani, Counsel for the appellants, is a novel one, namely, what are the rights of a chargor in possession whose property has been sold by the chargee in proceedings under section 138 of the Land Code and the chargee becomes the registered proprietor by purchase at the public auction.

The facts of this case may be set out briefly. The appellants are husband and wife, and the latter was since 1942 the registered proprietor of the land held under Certificate of Title No. 11008, on which stands the premises known as No. 95 Travers Road. The appellants were at all times, and still are, in occupation. The property was charged to the Bank in 1952. As a result of the proceedings it was sold by public auction and knocked down to the Bank on February 18, 1956. For reasons which are not clear the Bank was not registered as proprietor until May 22, 1956.

On February 22, 1956 the Bank's solicitors gave 7 days' notice to the appellants to quit and deliver up vacant possession of the premises. The notices, however, were never served, and no further notices were given.

On July 14, 1956 the Bank commenced action and obtained judgment *ex parte* on August 29, 1956. This judgment was set aside on appeal on September 14, 1957, and a rehearing ordered. On August 1, 1958 the President of the Sessions Court pronounced judgment against which this appeal is brought.

The main ground of appeal is that, on the evidence, the learned President should have held that the appellants were tenants at will and, as such, protected by the Control of Rent Ordinance. A subsidiary ground is that the appellants, being tenants at will, the learned President was wrong in holding that it was not necessary to serve on them notices to quit terminating their tenancy. The question, therefore, is whether or not there was a tenancy at will.

Mr. Ramani in his argument referred to certain passages in *Hill & Redman's Law of Landlord and Tenant*,* 10th edition, at pages 14 and 16:

> "A tenancy at sufferance arises where a person who has held by a lawful title continues the possession after the title has determined without either the agreement or disagreement of the person then entitled to the property . . . The tenancy arises by implication of law and cannot be created by contract between the parties." (p. 14).

> "A tenancy at will is a tenancy under which the tenant is in possession, and which is determinable at the will of either landlord or tenant . . . As in other tenancies, a tenancy at will arises by contract binding both lessor and lessee, and the contract may be express or implied . . . A tenancy at will is implied when a person is in possession by the consent of the owner, and his possession is not as servant or agent, and is not held in virtue of any freehold estate or of any tenancy for a certain term. It is implied accordingly in cases of mere permissive occupation without payment of rent." (p. 16).

As I understand it, the argument, based on the passages above quoted, is that on the date of the sale, the appellants held over, not as trespassers, but at least as tenants at sufferance; that in point of fact the negotiations and conduct of the parties was clear evidence of the appellants' being in possession with the consent of the Bank; that such consent constituted the appellants as tenants at will, and that a tenancy at will comes under the protection of the Ordinance.

Mr. Ramani's contentions are ingenious and attractive, and, if he is right the appeal should be allowed. It is therefore necessary to consider whether the appellants have made out their claim to have been, in truth and in fact, tenants at will of the Bank.

There is no dispute that the Bank knew the appellants were occupying the premises before and after the sale. Nor is it disputed that the notices of February 22, 1956 were sent by the Bank's solicitors four days after the sale. The attitude of the Bank towards the appellants is clearly demonstrated in the following paragraphs of the notices:

* Hill & Redman: 18th ed. 20, 22.

"We understand that you and your family are in occupation of the said house and land.

We are instructed to inform you that the Bank does not recognise you or any other person as being in lawful occupation of the premises but regards you and any other person or persons occupying the place as trespassers."

The last paragraph demanded vacant possession within 7 days.

The passage in *Hill and Redman* as to tenants at sufferance, however, sets out only the position at common law. Even then, as Scrutton L.J. said in *Remon* v. *City of London Real Property Co.*[1]:

"Tenants by sufferance seem to have been confined to persons who held over without the assent or dissent of their landlords, and not to have included persons who held over wrongfully in spite of the active objection of their landlords."

In the present case, even if the appellants, to start with, became by implication of law tenants at sufferance on the date of sale, they could not have held this precarious tenancy for more than a few days. I would observe that no notice is required to terminate any tenancy at sufferance, and a landlord may enter at any time.

Although the notices of February 22, 1956 were never served, I am of opinion that the non-service was intentionally brought about by the appellants themselves, because they must have been aware, in their negotiations with the Bank, of its attitude towards their continuance in occupation. These notices at least do establish the Bank's dissent or active objection to the tenancy at sufferance, and no such tenancy can therefore be implied in the circumstances. Nor does it matter that, when the notices were given, the Bank had not yet been registered as proprietor. Section 152 of the Land Code in no way detracts from the fact that by the sale all the beneficial interest of the chargor in the property had passed to the Bank as purchaser. As between these parties the Bank was entitled to express an objection which effectively serves to negative their acquiescence to any tenancy at sufferance arising by implication of law.

There is evidence that it was because of the negotiations between the parties that the Bank delayed proceedings to recover possession. The learned President has found that the appellants were well aware of the Bank's desire for vacant possession, and with that finding I agree. In the circumstances, I think forbearance on the part of the Bank does it credit, and such indulgence must not be lightly construed as indicating that the Bank agreed to any tenancy at will.

What Evershed M.R. said in *Marcroft Wagons Ltd.* v. *Smith*[2] is, I think, particularly applicable to the parallel circumstances of the present case:

"In particular, landlords, who may have ordinary human instincts of kindliness and courtesy, may often be afraid to allow to a tenant the benefit of those natural instincts in case it may afterwards turn out that the tenant has thereby acquired a position from which he cannot subsequently be dislodged . . . . . I should be extremely sorry if anything which fell from this court were to have the effect that a landlord could never grant to a person in the position of the defendant any kind of indulgence, particularly in circumstances such as existed in March 1950, when the defendant lost her mother. It seems to me that it would be quite shocking if, because a landlord allowed a condition of affairs to remain undisturbed for some short period of time, the law would have to infer that a relationship had arisen which made it impossible thereafter for the landlord to recover possession of the property, when, admittedly, by taking proper measures from the start, he could have got possession."

In my view it is a fallacy to deal with the case purely and simply on the basis of a tenancy at will at common law. As Denning L.J. said in the same case: "It is not correct to consider the common law position separately from the new position created by the Rent Restriction Acts." He went on to say that, whereas at common law landlords would have had a clear indisputable right to turn a tenant out on notice, so that it was proper to infer a tenancy at will or a weekly tenancy, as the case may be, from the acceptance of rent, the position is quite different when the rights of landlords are obscured by the Rent Restriction Acts. He then laid down the test which I would respectfully adopt:

"The test to be applied in Rent Restriction Acts cases is the same test as that laid down by Lord Mansfield in cases of holding over: The question therefore is, *quo animo* the rent was received, and what the real intention of both parties was?"

Applying this test, I am satisfied that the learned President was right in holding that the permissive occupation of the premises by the appellants was one falling short of a tenancy, and therefore not protected by the Control of Rent Ordinance.

Furthermore, it is to be remembered that the appellants did not at any time pay rent, nor was any question of rent ever discussed between the parties during their negotiations. Had they paid rent the appellants might have been in a stronger position to argue that what they had was a true tenancy. A rent free tenant in England cannot claim the protection of the Acts: *Bracey* v. *Pales*[3]; and, in my view, the position is the same here under our Ordinance, which makes it clear beyond a peradventure that the Ordinance does not apply to tenants who pay no rent.

In the result, I agree with the learned President that the appellants have failed to establish their claim to be tenants at will. They were, in my opinion, only bare licensees, and, on the evidence, had been given ample notice before action. Furthermore, service of the summons and statement of claim in the Sessions Court action is in itself a notice of termination of the licence: *Tool Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.*[4] The appellants had two years notice between filing of action and judg-

ment, which is more than ample notice to a licensee. The appeal is therefore dismissed with costs.

I would add that, while Mr. Peddie did not object to Mr. Ramani arguing on a point not raised in the Memorandum of Appeal, namely, as to the amount of damages or mesne profits awarded, I see no ground for interfering with the decision of the learned President, although I must say, with respect, that that portion of the order giving the appellants three months within which to vacate the premises is in my view entirely wrong in law.

Appeal dismissed.

Solicitors: *Braddell & Ramani; Bannon & Bailey.*

CHEW MING v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Rigby and Hepworth JJ.) March 25, 1959]

[Ipoh — F.M. Criminal Appeal No. 5 of 1959]

Criminal Law and Procedure — Murder — Penal Code s.302 — Joinder of trial of three charges of murder — Undesirability of — Probative value of general evidence — Misdirection — Evidence of "vulnerable personality."

Theoretically no offence is committed except by a person who by reason either of psychological or moral deficiency is likely to commit offences. In that sense any evidence as to character or disposition has at least some limited probative value. However, the accepted rule of law is that such general evidence is not admissible, and to make any evidence of disposition admissible there must be some particular connection between it and the identity of the person who has committed a crime.

Observations on undesirability of joinder of trial of more than one charge of murder.

Cases referred to:—

(1) *R.* v. *Davis*, 26 Cr.App.R. 95; [1937] 3 All E.R. 537.

(2) *R.* v. *Straffen*, [1952] 2 Q.B. 911.

(3) *Thompson* v. *R.* [1918] A.C. 221.

COURT OF APPEAL. Appeal from the High Court at Seremban.

P. P. Dharmananda for the appellant.

Abdul Kadir bin Yusof (Federal Counsel) for the respondent.

Thomson C.J.: This appellant was tried before Smith J., at Seremban on three charges of murder in contravention of section 302 of the Penal Code. He was convicted on one of these charges and sentenced to death. He appealed against his conviction and we dismissed his appeal on 2nd March, 1959.

The charges arose out of three Chinese children aged 10, 7 and 4 years being found stabbed to death in a house in Mambau New Village. It was the case for the prosecution that all three children had been killed at the same time by one and the same person who was said to be the appellant. Presumably it was on this ground that the trial Judge decided to try the three charges together, a course to which no objection was taken either at the trial or before us. In our view no injustice was caused to the appellant by this course having been taken and the fact that it was taken is not in itself fatal to the conviction (see *R.* v. *Davis*(1)). Nevertheless we would reiterate the view of Lord Hewart, L.C.J., in the case cited that the trial together of more than one charge of murder is undesirable. That warning gains strength from what in fact happened in the present case. The jury found the verdict of guilty in respect of the first charge unanimously but in respect of the second and third charges they only found such verdicts by majorities and the trial Judge did not agree with these majority verdicts. How any reasonable jury could have been in such a state of mental confusion as clearly were some of this jury it is quite impossible to say for there is no reason to suppose that they were of any greater or less intelligence than other jurors. But although no injustice has been done in the present case the fact that such confusion did arise clearly shows that Lord Hewart's warning is very much in point in this country.

The case against the appellant consisted of a very strong body of circumstantial evidence. On the morning of 1st December, 1957, the mother of the children and her eldest son had gone to work leaving the three deceased children in her house of which a room was occupied by the appellant with his wife and daughter. On the morning in question the appellant had been away from home for about three days and his wife who had remained at home had gone to work leaving her child with a neighbour. About 11 a.m. the appellant came from the direction of the house with bloodstained clothing and complained to his sister that he had been attacked. He then went to the hospital where he was found to have injuries to his throat which in the opinion of the Doctor who examined him were self-inflicted. Shortly afterwards the Police went to the house and found the dead bodies of the children. Later in the day the mother of the children returned and found that some jewellery was missing from her bag. Some time later the appellant led the Police to a spot where they found the missing jewellery.

The appellant did not deny that he had killed the children. He elected to make a statement from the dock in which he said he often had headaches and when he had headaches he was upset and did not know what he did. He did not know in particular what happened on the day the children was killed. Evidence for the defence was given by the Medical Superintendent of the Tampoi Mental Hospital where the appellant had been under observation for some time. His evidence was to the effect that in his opinion the appellant had a 'vulnerable personality', that is to say, was a person on the borderline between sanity and insanity who was subject to uncontrollable outbursts of rage. His evidence did not go so far as saying that at the time of killing the children, if he did kill them, the appellant was by reason of unsoundness of mind incapable